13272, or any part of it by virtue of the fact that he is no longer in physical possession of the title fer part of that land.

That he had at no time the intention of abandoning that lien or any part of it.

That he did not take the lien subject to any equities that might be existing at the time the lien was created.

That when it came to his knowledge that the land in question was being sub-divided, he was not put upon enquiry.

And that there is no evidence that anything has occurred to deprive the Respondent of his lien upon the half undivided share of S. L. S. Chettiappa Chettiar in the land formerly comprised in Grant 13272 and now comprised in Certificates of Title 10950 and 10951.

For these reasons the application is refused, and the Applicant must pay the Respondent's costs.

Application refused.

[APPELLATE CIVIL JURISDICTION]
GERATHY, J.
June 23, 1933.

K. SOCKALINGAM MUDALIAR ..... Appellant.

vs.

NADASAN SERANG.....Respondent.

[PERAK MAGISTRATE'S CIVIL APPEAL No. 17 of 1933]

Public Servants (Liabilities) Perak Order in Council, 1896, section 4—Effect of repeal—Public Servants Liabilities Enactment 1902, Repeal Enactment 1930, section 2—General Clauses Amendment Enactment, 1924, sections 3 (d) (ii) and (iv).

Under the provisions of sub-sections 3 (d) (ii) and (iv) of the General Clauses Amendment Enactment, 1924, not only is the immunity conferred upon public servants by section 3 of the Public Servants (Liabilities), Perak Order in Council, 1896, preserved but also the rights and privileges conferred upon them by section 4.

The fact that section 2 of the Public Servants Liabilities Enactments 1902, Repeal Enactment, 1930, specifically saves the immunity of public servants from the maintenance of actions against them cannot be taken to extinguish the rights and privileges of public servants in respect of that immunity conferred upon them by section 4 of the Public Servants (Liabilities), Perak Order in Council, 1896.

E. D. Shearn for the Appellant.

J. Dunford Wood for the Respondent.

Cur. Adv. Vult.

GERAHTY, J.—The facts giving rise to this appeal are as follows:—

On the 27th June, 1927, the plaintiff-appellant obtained a decree against the respondent (second defendant in the suit) on a claim for $489—being principal and interest due on a promissory note.

On the 9th August, 1932, the decree holder obtained an order for execution against the first defendant and the present respondent.

On the 26th November, 1932, the decree holder took out a judgment debtor summons against the respondent.

On the 14th March, 1933, the respondent made an application to set aside the decree passed against him. This application was supported by an affidavit averring that when he signed the promissory note in question he was a "Public Servant" within the meaning of the Public Servants (Liabilities) Regulation (Perak Order in Council 1896) and referring to section 4 of that Order in Council; further that at the time of the passing of the decree he was unaware of the law of the State.

The application was entertained by the Magistrate, Ipoh, and on the 8th April, 1933, an order was made setting aside the decree and declaring the same void under the Public Servants (Liabilities) Regulation.

The present appeal lies against that order on the ground that the Magistrate had no power to make an order setting aside and declaring void the decree against the defendant-respondent.

It is admitted that the defendant-respondent was in fact a "Public Servant" within the meaning of the Public Servants (Liabilities) Regulation, and that the decree in question was obtained in an "Action" within the meaning of the same Regulation. It is, however, contended by Mr. Shearn for the appellant that the Magistrate had no power to rescind the decree once it had been made and effected unless the case falls within either section 594 of the Civil Procedure Code or within section 4 of the Public Servants (Liabilities) Regulation and further that it is not a case within the purview of section 594 of the Civil Procedure Code and that the Magistrate had no power to investigate under section 4 of the Public Servants (Liabilities) Regulation, in as much as the provisions of that section have been repealed by the Public Servants Liabilities Enactments, 1902, Repeal Enactment 1930 (No. 17 of 1930). It is, in my opinion, quite clear that as a general rule a Judge or Magistrate has no power to rehear, review, alter or vary any judgment after it is entered or order after it is made up, except in cases which fall under what is known as "The Slip Rule." See the Yearly Practice of the Supreme Court 1933, Vol. I, p. 433 and the cases cited thereunder. It is equally clear, I consider, that this is not a case which is covered by the provisions of section 594 of the Civil Procedure Code.

The power, if any, then could only be exercised in this case by the Magistrate purporting to act under section 4 of the Public Servants (Liabilities) Regulation, and the short point of this appeal is to decide whether those powers have been preserved after the passing of Enactment No. 17 of 1930. Section 2 of that Enactment runs as follows:—

> "The Enactments specified in the schedule are hereby repealed but this repeal shall not render any action maintainable against a public servant in respect of any promise made or bond bill of exchange promissory note or other security made drawn accepted endorsed or given by him before the passing of this Enactment which would not have been maintainable had the said Enactments continued in force."

The Public Servants (Liabilities) Perak Order in Council 1896 is one of the Enactments specified in the schedule. It is contended by Counsel for the appellant that the effect of this Enactment is merely to continue the immunity of public servants against the continuance of actions brought and the bringing of fresh actions in respect of promises made or bond, bills of exchange, promissory note &c. given by a public servant before the passing of the Repeal Enactment and that the rights and powers conferred by section 4 have been extinguished by the Repeal Enactment. I am unable to agree with this contention.

Mr. Dunford Wood has drawn my attention to the General Clauses Amendment Enactment, 1924, which was in operation at the time material to this case, and he contends that by section 3 (d) (ii) and (iv) of the General Clauses Enactment 1897, as amended, the rights, liberties and privileges conferred by section 4 of the Public Servants (Liabilities) Regulation upon public servants have not been affected by the Repeal Enactment No. 17 of 1930 in the absence of an express provision to the contrary in that Enactment.

Now assume for one moment that the Repeal Enactment contained merely a bare repeal of the Enactments specified in the schedule without any saving clause at all. It appears to me in such a case that under the provisions of section 3 (d) (ii) and (iv) of the General Clauses Enactment not only the immunity conferred upon public servants by section 3 of the Public Servants (Liabilities) Regulation would have been preserved but also the rights and privileges conferred upon them by section 4 of that Enactment.

The fact that section 2 of Enactment No. 17 of 1930 specifically saves the immunity of public servants from the maintenance of actions against them cannot in my view be taken to extinguish the rights and privileges of public servants in respect of that immunity conferred upon them by section 4 of the Public Servants (Liabilities) Regulation. To hold otherwise would be reading into the Repeal Enactment something which is not there something which has not been expressly provided as required by the General Clauses Enactment.

In the circumstances I am of opinion that in this case the Magistrate had power to examine into and entertain the application made by the respondent. I consider, however, that the correct order for him to have made was not to set aside the decree but to have made an order discharging the respondent from his liabilities thereunder and from any process, execution or order issued out of any Court in respect thereof.

The appeal must be dismissed and I direct that the order of the Magistrate be varied accordingly. There will be no order as to costs.

Appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]

GERAHTY, J.

July 7, 1933.

RE: FONG FUNG LOON
EX PARTE: N. V. R. M. NADERAJAN CHETTIAR

[PERAK BANKRUPTCY No. 64 of 1933]

Bankruptcy—Bankruptcy Notice—Counterclaim exceeding amount of judgment debt and which the judgment debtor could not set up in the action in which judgment obtained—Bankruptcy Enactment, 1912, section 4 (1) (i).

In an action the debtor obtained an order granting him leave to defend conditional upon furnishing security. He appealed against this order, his appeal was dismissed, and he failed to give the security ordered. The creditor obtained judgment against him and issued a bankruptcy notice. *Held*, that the debtor had not an effective counterclaim against the judgment debt, which he could not have set up in the action, since he in fact did set up a counterclaim and was given conditional leave to defend.

S. B. Sinha for the Debtor.

S. K. Das for the Creditor.

Cur. Ad. Vult.

GERAHTY, J.—This is a motion by a judgment debtor to set aside a bankruptcy notice on the ground that he has a counterclaim which exceeds the amount of the judgment debt and which he could not set up in the action in which the decree was obtained *vide* The Bankruptcy Enactment, 1912, section 4 (1) (i).

In the action the debtor made application before the Registrar for an order that he be allowed unconditional leave to appear and defend the suit and for an order to file a counterclaim against the plaintiff. Upon this application the learned Registrar ordered that the defendant be at liberty to appear and defend the suit conditional upon his furnishing security within 14 days. The defendant appealed against this order, but the appeal was dismissed with costs. The defendant failed to give the security ordered but filed a counterclaim.

On the 4th May, 1933, the Registrar gave judgment as prayed holding that as the defendant had failed to give security he was not entitled to go on with his defence or take further steps in the suit.

On the 6th June, 1933, the judgment creditor took out the bankruptcy notice the subject of this motion.

The question is has the judgment debtor a counterclaim which he could not set up in the action in which the decree was obtained in accordance with the provisions of section 4 (1) (i) of the Bankruptcy Enactment?

In my view it would be impossible to hold that the judgment debtor had a counterclaim which he could not set up in the action since he in fact did set up a counterclaim and was given conditional leave to defend. It seems to me that the debtor was afforded ample opportunity to set up his counterclaim and to proceed with it on terms imposed by the Registrar and approved on appeal.